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Fourth Party Plaintiff,
Chicago Title Insurance Company**

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

JP Morgan Chase Bank, N.A., et al.,
Plaintiff,

v.

Civil Action No.: 08-02154-VM

Law Office of Robert J. Gumenick, P.C.,
et al.

Defendant, Third-Party Plaintiff,

v.

Chicago Title Insurance Company, et al.,
Third-Party Defendant/Fourth-
Party Plaintiff,

V.

**ANSWER TO SECOND AMENDED
COMPLAINT, SEPARATE DEFENSES
AND JURY DEMAND**

Empire Equity Group d/b/a 1st Metropolitan
Mortgage, Inc.
Fourth-Party Defendant.

Defendant, Chicago Title Insurance Company (“Chicago Title”), by and through its undersigned counsel, as and for its answer to the Second Amended Complaint of plaintiff, JP Morgan Chase Bank, N.A., says:

THE PARTIES

1. Chicago Title lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1, 2, 3, 4, 7 and 8 of the Second Amended Complaint and, therefore, neither admits nor denies same but leaves plaintiff to its proofs.

2. Chicago Title admits the allegations contained in paragraphs 5 and 6 of the Second Amended Complaint.

JURISDICTION AND VENUE

3. Chicago Title lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 9 and 10 of the Second Amended Complaint and, therefore, neither admits nor denies same but leaves plaintiff to its proofs.

FACTUAL BACKGROUND

4. Chicago Title lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Second Amended Complaint and, therefore, neither admits nor denies same but leaves plaintiff to its proofs.

5. Chicago Title, upon information and belief, admits the allegations contained in paragraph 12 of the Second Amended Complaint.

THE NORWOOD LOAN

6. The allegations contained in paragraphs 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34 of the Second Amended Complaint are allegations that are not directed at Chicago Title and/or as to which Chicago Title lacks knowledge or information sufficient to form a belief concerning their truth; accordingly, Chicago Title neither admits nor denies same but leaves plaintiff to its proofs.

7. Chicago Title admits the allegations contained in paragraph 35 of the Second Amended Complaint.

8. The allegations contained in paragraphs 36, 37, 38, 39, 40 and 41 of the Second Amended Complaint are allegations that are not directed at Chicago Title and/or as to which Chicago Title lacks knowledge or information sufficient to form a belief concerning their truth; accordingly, Chicago Title neither admits nor denies same but leaves plaintiff to its proofs.

9. Chicago Title lacks knowledge or information at this time sufficient to determine the truth of the allegations contained in paragraph 42 and therefore, neither admits nor denies same at this time.

10. The allegations contained in paragraphs 43, 44, 45 and 46 of the Second Amended Complaint are allegations that are not directed at Chicago Title and/or as to which Chicago Title lacks knowledge or information sufficient to form a belief concerning their truth; accordingly, Chicago Title neither admits nor denies same but leaves plaintiff to its proofs.

11. Chicago Title admits the allegations contained in paragraph 47 of the Second Amended Complaint.

12. The allegations contained in paragraphs 48 and 49 of the Second Amended Complaint are allegations that are not directed at Chicago Title and/or as to which Chicago Title lacks knowledge or information sufficient to form a belief concerning their truth; accordingly, Chicago Title neither admits nor denies same but leaves plaintiff to its proofs.

THE HARTFORD LOAN

13. The allegations contained in paragraphs 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69 and 70 of the Second Amended Complaint are allegations that are not directed at Chicago Title and/or as to which Chicago Title lacks knowledge or

information sufficient to form a belief concerning their truth; accordingly, Chicago Title neither admits nor denies same but leaves plaintiff to its proofs.

**FIRST COUNT – LEGAL MALPRACTICE (NEGLIGENCE)
(Norwood Loan)**

14. Chicago Title restates each and every answer to the allegations contained in paragraphs 1 through 70 of the Second Amended Complaint as if set forth at length herein.

15. The allegations contained in paragraphs 72, 73, 74, 75 and 76 of the Second Amended Complaint are allegations that are not directed at Chicago Title and/or as to which Chicago Title lacks knowledge or information sufficient to form a belief concerning their truth; accordingly, Chicago Title neither admits nor denies same but leaves plaintiff to its proofs.

**SECOND COUNT – BREACH OF CONTRACT
(Norwood Loan)**

16. Chicago Title restates each and every answer to the allegations contained in paragraphs 1 through 76 of the Second Amended Complaint as if set forth at length herein.

17. The allegations contained in paragraphs 78, 79, 80, 81 and 82 of the Second Amended Complaint are allegations that are not directed at Chicago Title and/or as to which Chicago Title lacks knowledge or information sufficient to form a belief concerning their truth; accordingly, Chicago Title neither admits nor denies same but leaves plaintiff to its proofs.

**THIRD COUNT – BREACH OF FIDUCIARY DUTY
(Norwood Loan)**

18. Chicago Title restates each and every answer to the allegations contained in paragraphs 1 through 82 of the Second Amended Complaint as if set forth at length herein.

19. The allegations contained in paragraphs 84, 85, 86, 87 and 88 of the Second Amended Complaint are allegations that are not directed at Chicago Title and/or as to which

Chicago Title lacks knowledge or information sufficient to form a belief concerning their truth; accordingly, Chicago Title neither admits nor denies same but leaves plaintiff to its proofs.

**FOURTH COUNT – BREACH OF CONTRACT
(Hartford Loan)**

20. Chicago Title restates each and every answer to the allegations contained in paragraphs 1 through 88 of the Second Amended Complaint as if set forth at length herein.

21. The allegations contained in paragraphs 90, 91, 92, 93 and 94 of the Second Amended Complaint are allegations that are not directed at Chicago Title and/or as to which Chicago Title lacks knowledge or information sufficient to form a belief concerning their truth; accordingly, Chicago Title neither admits nor denies same but leaves plaintiff to its proofs.

**FIFTH COUNT – BREACH OF FIDUCIARY DUTY
(Hartford Loan)**

22. Chicago Title restates each and every answer to the allegations contained in paragraphs 1 through 94 of the Second Amended Complaint as if set forth at length herein.

23. The allegations contained in paragraphs 96, 97, 98, 99 and 100 of the Second Amended Complaint are allegations that are not directed at Chicago Title and/or as to which Chicago Title lacks knowledge or information sufficient to form a belief concerning their truth; accordingly, Chicago Title neither admits nor denies same but leaves plaintiff to its proofs.

**SIXTH COUNT – BREACH OF CONTRACT
(Norwood Loan)**

24. Chicago Title restates each and every answer to the allegations contained in paragraphs 1 through 100 of the Second Amended Complaint as if set forth at length herein.

25. The allegations contained in paragraphs 102, 103, 104, 105 and 106 of the Second Amended Complaint are allegations that are not directed at Chicago Title and/or as to which

Chicago Title lacks knowledge or information sufficient to form a belief concerning their truth; accordingly, Chicago Title neither admits nor denies same but leaves plaintiff to its proofs.

**SEVENTH COUNT
(JOSEPH KOHEN, AND JEROME SHAPIRO)**

26. Chicago Title restates each and every answer to the allegations contained in paragraphs 1 through 106 of the Second Amended Complaint as if set forth at length herein.

27. The allegations contained in paragraphs 108, 109 and 110 of the Second Amended Complaint are allegations that are not directed at Chicago Title and/or as to which Chicago Title lacks knowledge or information sufficient to form a belief concerning their truth; accordingly, Chicago Title neither admits nor denies same but leaves plaintiff to its proofs.

**EIGHTH COUNT
(SUCCESSFUL TITLE, AND CHICAGO TITLE)**

28. Chicago Title restates each and every answer to the allegations contained in paragraphs 1 through 110 of the Second Amended Complaint as if set forth at length herein.

29. Chicago Title asserts, as to paragraph 112 of the Second Amended Complaint, that the Third Party Complaint speaks for itself as to its content and denies the allegation or inference that Chicago was negligent or fraudulent or is otherwise liable to the third party plaintiff and denies all other allegations of paragraph 112 of the Second Amended Complaint.

30. Chicago Title denies all allegations or inferences of negligence and fraud; as to the balance of the allegations in paragraph 113, they are not directed at Chicago Title.

31. Chicago Title denies the allegations contained in paragraph 114 of the Second Amended Complaint.

32. Chicago Title denies the allegations contained in paragraph 115 of the Second Amended Complaint.

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

Plaintiff's claims are barred for failure to state a cause of action or claim upon which relief can be granted.

SECOND SEPARATE DEFENSE

The relief sought by plaintiff is barred by the Doctrine of Estoppel.

THIRD SEPARATE DEFENSE

The relief sought by plaintiff is barred by the Doctrine of Laches.

FOURTH SEPARATE DEFENSE

The relief sought by plaintiffs is barred by the Doctrine of Waiver.

FIFTH SEPARATE DEFENSE

The relief sought by plaintiffs is barred by the Doctrine of Ratification.

SIXTH SEPARATE DEFENSE

Plaintiff's claims are barred due to a failure of consideration.

SEVENTH SEPARATE DEFENSE

Any damages incurred by Plaintiff are the result of its own acts or omissions and/or the acts or omissions of its attorney, Gumenick, or other third parties over whom Chicago Title had no control.

EIGHTH SEPARATE DEFENSE

Plaintiff's claims are subject to the Doctrines of Contributory and Comparative Negligence, as enacted/applied in the States of New Jersey and/or New York, as applicable.

NINTH SEPARATE DEFENSE

Chicago Title reserves the right to amend its Answer to add new parties/claims and to add additional defenses, as the facts revealed in discovery may warrant.

TENTH SEPARATE DEFENSE

Chicago Title owed no duty to Plaintiff.

ELEVENTH SEPARATE DEFENSE

Plaintiff failed to mitigate any damages it may have suffered.

TWELFTH SEPARATE DEFENSE

The relief sought by plaintiff is barred by the Doctrine of Unclean Hands.

THIRTEENTH SEPARATE DEFENSE

Plaintiff's claims are barred for failure to mitigate its damages, if any.

FOURTEENTH SEPARATE DEFENSE

Plaintiff's alleged cause of action is barred by applicable statutes of limitations.

FIFTEENTH SEPARATE DEFENSE

Plaintiff lacks standing to sue Chicago Title.

SIXTEENTH SEPARATE DEFENSE

Plaintiff is not an insured of Chicago Title with respect to the subject loans and transactions.

WHEREFORE, Defendant, Chicago Title Insurance Company, respectfully requests that the Complaint against it be dismissed in all respects, with prejudice, and that it be awarded attorney's fees, costs of suit and such other and further relief as this Court shall deem just and equitable.

JURY DEMAND

Chicago Title demands a trial by jury as to all issues so triable.

Dated: Livingston, New Jersey
November 24, 2009

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Chicago Title Insurance Company

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